## UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

State of Minnesota, by Michael Campion, its Commissioner of Public Safety,

File. 08-CV-603 (DWF/AJB)

Plaintiff,

v.

CMI of Kentucky, Inc., a Kentucky corporation,

Defendant.

AFFIDAVIT OF WILLIAM A.
MCNAB IN OPPOSITION TO
MOTION FOR LEAVE TO
INTERVENE

STATE OF MINNESOTA)

) ss:

COUNTY OF HENNEPIN)

William A. McNab, having been duly sworn upon oath, states as follows:

- 1. I am an attorney duly licensed to practice law in the State of Minnesota and admitted to practice before this Honorable Court. I am a shareholder with the law firm of Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, Minnesota 55402, and represent the Defendant in the above-captioned matter. I respectfully submit this affidavit upon personal knowledge.
- 2. A true and correct copy of the State of Minnesota, Department of Administration Request for Proposal for Evidentiary Breath Alcohol Test Instruments ("RFP"), dated in or about October, 2006, is attached hereto as Exhibit 1.
- 3. A true and correct copy of CMI, Inc.'s Response and Proposal to the RFP dated on or about October 25, 2006, is attached hereto as Exhibit 2.

- 4. A true and correct copy of the State of Minnesota, Department of Administration Notification of Contract Award to CMI, Inc. dated January 2, 1997, and subsequent amendments thereto is attached hereto as Exhibit 3.
- 5. A true and correct copy of the March 17, 2008, Minnesota Lawyer article "Defense bar weighs impact of Intoxlyizer suit brought by state" by Barbara L. Jones, is attached hereto as Exhibit 4.
- 6. A true and correct copy of the June 16, 2008, Minnesota Lawyer article "Brief: Defense attorney to intervene in intoxylizer suit" is attached hereto as Exhibit 5.
- 7. A true and correct copy of the unreported decision in *State v. Underdahl*, Nos. A07-2293, A07-2428, 2008 Minn. App. LEXIS 291 (Minn. Ct. App. May 20, 2008) is attached hereto as Exhibit 6.
- 8. A true and correct copy of the unreported decision in *State v. Olcott*, 2008 Minn. App. LEXIS 374 (Minn. Ct. App. April 15, 2008) attached hereto as <u>Exhibit 7</u>.
- 9. A true and correct copy of the unreported decision in *Furey v. Executive Risk Indem.*, *Inc.*, No. 01-03-P-C, 2001 U.S. Dist. LEXIS 8946 (D. Me. June 26, 2001) is attached hereto as Exhibit 8.
- 10. A true and correct copy of the unreported decision in *Monroe Pavilion Health Care, Inc. v. Miller*, Nos. 83 C2621, 83 C2544, 1983 U.S. Dist. LEXIS 12578 (N.D. Ill. 1983) is attached hereto as Exhibit 9.
- 11. A true and correct copy of the unreported decision in *Snell v. Allianz Life Ins. Co. of N. Am.*, No. Civ. 97-2784, 2000 U.S. Dist. LEXIS 13611 (D. Minn. Sept. 8, 2000) is attached hereto as Exhibit 10.

## FURTHER YOUR AFFIANT SAYETH NOT.

s/William A. McNab
William A. McNab

Subscribed and sworn to before me this 9th day of July, 2008.

s/Kristin E. Colón
Notary Public
State of Minnesota
My Commission Expires January 31, 2011

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